

Message Text

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ORIGIN STR-07

INFO OCT-01 IO-13 ISO-00 STRE-00 AID-05 CEA-01 CIAE-00
COME-00 EB-08 EUR-12 FRB-03 INR-10 NSAE-00 SP-02
TRSE-00 LAB-04 SIL-01 OMB-01 AGRE-00 CTME-00 L-03
/071 R

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APPROVED BY STR/WBKELLY, JR.
LABOR/RJACOVITZ
TREAS/JSHELTON
STATE/CJACOBINI
AGRIC/JCHASE
COM/DSHARK
CUSTOMS/JO'LOUGHLIN/SCARAMAGNO
-----027266 190452Z /13
P 190105Z MAY 78
FM SECSTATE WASHDC
TO USMISSION GENEVA PRIORITY

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USMTN

E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: U.S. SUGGESTIONS FOR EC REDRAFT OF CUSTOMS
VALUATION CODE

1. FOLLOWING SETS FORTH OUR SUGGESTED REDRAFT OF CERTAIN
PARTS OF ARTICLE 1 AND OF ARTICLE 6 OF EC DRAFT VALUATION
CODE WHICH WE PROMISED THE EC LAST WEEK. PLEASE TRANSMIT
THESE SUGGESTIONS TO EC SOONEST.

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2. ARTICLE 1, SUBPARAGRAPH (C). THAT THERE ARE NO RE-
STRICTIONS AS TO THE DISPOSITION OR USE OF THE MERCHANDISE
BY THE PURCHASER, EXCEPT RESTRICTIONS AS TO SUCH DISPOSI-
TION AND USE WHICH (-) ARE IMPOSED OR REQUIRED BY LAW,
(II) LIMIT THE TERRITORY IN WHICH THE GOODS MAY BE RESOLD,
OR (III) DO NOT SUBSTANTIALLY AFFECT THE VALUE OF THE GOODS.

3. ARTICLE 1, SUBPARAGRAPH (D). THAT THE SALE OR PRICE DOES NOT INCLUDE OR IS NOT CONDITIONED ON SOME FACTOR OR CONSIDERATION NOT SUBJECT TO VALUATION.

4. ARTICLE 1, SUBPARAGRAPH (E). THAT PART OF THE PROCEEDS OF ANY SUBSEQUENT RESALE OR OTHER DISPOSAL OF THE GOODS BY THE BUYER WILL NOT ACCRUE DIRECTLY OR INDIRECTLY TO THE SELLER, UNLESS AN APPROPRIATE ADJUSTMENT CAN BE MADE IN

ACCORDANCE WITH ARTICLE 7.

5. ARTICLE 6.

1. IN DETERMINING WHETHER THE PRICE PAID OR PAYABLE IS ACCEPTABLE FOR THE PURPOSES OF ARTICLE 1, THE FACT THAT THE BUYER AND THE SELLER ARE RELATED WITHIN THE MEANING OF ARTICLE 16 SHALL NOT IN ITSELF BE GROUNDS FOR REGARDING THE PRICE PAID OR PAYABLE AS UNACCEPTABLE. IN SUCH CASES THE CIRCUMSTANCES SURROUNDING THE SALE SHALL BE EXAMINED AND THE PRICE PAID OR PAYABLE SHALL BE ACCEPTED WHENEVER IT IS ESTABLISHED THAT THE RELATIONSHIP HAS NOT INFLUENCED THE PRICE.

2. THE PRICE PAID OR PAYABLE SHALL BE DEEMED TO BE AN ACCEPTABLE PRICE AND THE GOODS VALUED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 1 WHENEVER IT IS DEMONSTRATED THAT SUCH PRICE CLOSELY APPROXIMATES ONE OF THE FOLLOWING:
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A. THE PRICE PAID OR PAYABLE IN SALES TO UNRELATED BUYERS OF IDENTICAL OR SIMILAR GOODS (AS DEFINED IN ARTICLES 2 AND 3) FOR EXPORT TO THE SAME COUNTRY OF IMPORTATION.

B. THE PRICE PAID OR PAYABLE IN SALES TO UNRELATED BUYERS OF IDENTICAL OR SIMILAR GOODS IN THE EXPORTING COUNTRY WITH ADJUSTMENTS FOR COSTS NOT INCURRED IN EXPORT SALES.

C. THE PRICE PAID OR PAYABLE IN SALES TO UNRELATED BUYERS FOR EXPORT TO THE SAME COUNTRY OF IMPORTATION OF GOODS FROM OTHER COUNTRIES WHICH WOULD BE IDENTICAL OR SIMILAR TO THE IMPORTED GOODS EXCEPT FOR HAVING A DIFFERENT COUNTRY OF ORIGIN.

D. THE VALUE OF IDENTICAL OR SIMILAR GOODS AS DETERMINED UNDER THE PROVISIONS OF ARTICLE (EC DEDUCTIVE METHOD) OR ARTICLE (U.S. COMPUTED METHOD).

3. IN APPLYING THE TESTS SET FORTH IN PARAGRAPH 2 ABOVE, DUE ACCOUNT SHALL BE TAKEN OF DIFFERENCES IN COMMERCIAL LEVELS AND QUANTITIES AND ALLOWANCE SHALL BE MADE FOR

DIFFERENCES ATTRIBUTABLE TO COSTS INCURRED BY THE SELLER
IN SALES TO UNRELATED BUYERS WHICH ARE NOT INCURRED BY THE
SELLER IN SALES TO RELATED BUYERS.

4. THE TESTS SET FORTH IN PARAGRAPH 2 ABOVE ARE TO BE
USED FOR COMPARISON PURPOSES ONLY, AND SUBSTITUTE VALUES
MAY NOT BE ESTABLISHED BY THE PROVISIONS OF THIS ARTICLE.
(PRO MEMORIAM: AN INTERPRETATIVE NOTE MAY BE USEFUL TO
EXPLAIN THE RELATIONSHIP BETWEEN SUBPARAGRAPHS 1 AND 2)

6. FYI. WE ARE ALSO STUDYING, INTER ALIA, THE ISSUES OF A
FINAL FALLBACK VALUATION METHOD AND HOW TO INTERPRET THE
CIRCUMSTANCES SURROUNDING THE SALE REFERRED TO IN ARTICLE 6
AND WILL PRESENT OUR IDEAS ON THESE MATTERS TO THE EC AT
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OUR NEXT BILATERAL. END FYI. VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: POLICIES, AGREEMENT DRAFT, CUSTOMS DUTIES, STANDARDS
Control Number: n/a
Copy: SINGLE
Draft Date: 19 may 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE127485
Document Source: CORE
Document Unique ID: 00
Drafter: SBWILSON/MFD
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780210-0630
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780539/aaaabgwv.tel
Line Count: 137
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 577e179a-c288-dd11-92da-001cc4696bcc
Office: ORIGIN STR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2633332
Secure: OPEN
Status: NATIVE
Subject: U.S. SUGGESTIONS FOR EC REDRAFT OF CUSTOMS VALUATION CODE
TAGS: ETRD, US, MTN
To: GENEVA USMTN
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/577e179a-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014